LAW OFFICES
GOLDBERG, GODLES, WIENER & WRIGHT
1229 NINETEENTH STREET, N.W.
WASHINGTON, D.C. 20036

HENRY GOLDBERG
JOSEPH A. GODLES
JONATHAN L. WIENER
HENRIETTA WRIGHT
MARY J. DENT
DANIEL S. GOLDBERG
W. KENNETH FERREE

THOMAS G. GHERARDI, P.C.
COUNSEL

(202) 429-4900
TELECOPIER:
(202) 429-4912

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FEDERAL COMMUNICATIONS COMMISSION

February 4, 1997

EX PARTE

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

Re: CS Docket No. 95-184

Dear Chairman Hundt:

It has come to my attention that Time Warner and other franchised cable multiple system operators ("MSOs") have, during visits with the Commissioners and their staffs regarding the above-referenced matter, been making accusations that multiple dwelling unit ("MDU") owners auction off their tenants to the multichannel video programming distributor ("MVPD") who will pay the largest "kickback" to the MDU owner in exchange for an exclusive service contract to the detriment of the tenants. You should know that, not only is this accusation a gross and misleading exaggeration, but that often it is the MDU owner who is the victim of terror tactics used by MSOs when a competing service provider seeks to serve an MDU.

To illustrate this fact, I have attached a copy of a very recent letter from Time Warner to an MDU owner who was considering taking service from my client, OpTel, Inc. ("OpTel"). As you can see, the letter makes it quite clear that "Time Warner is very aggressive" and that the MDU owner can expect to be sued if he elects to take service from OpTel. "Litigation is very expensive," Time Warner cautions, "and full of surprises such as 'Irrevocable License' or 'Prescriptive Easement' to mention just a few."

Showing very little regard for the MDU residents, Time Warner states that, "Protracted litigation and interruption of service are issues that are not easily remedied once the lines of service and communication are cut." The letter goes on to continue to recite the parade of horribles that Time Warner claims the MDU owner can expect to encounter if he contracts for service from OpTel.

The use of such scare tactics is not unique to Time Warner. The fact of the matter is that efforts to intimidate MDU owners who are considering taking service from an alternative provider is quite common in the market. Naturally, when faced with a threat of litigation from — in Time Warner's case — one of the world's largest entertainment conglomerates, many MDU owners decide that discretion is the better part of valor and continue to take service from the MSO, whether or not it is the best service for the MDU tenants.

The attached letter also demonstrates a second point: The so-called "kickbacks" that MDU owners are alleged to pocket at the expense of tenants from competing MVPDs are no different than Time Warner's own revenue sharing arrangements. To further illustrate this point, I have also attached a portion of a proposal submitted by Time Warner to another MDU at which OpTel and Time Warner are competing to provide service.

In this proposal, Time Warner has offered to pay the MDU owner a "royalty fee" calculated as a percentage of gross revenues collected. Presumably Time Warner pays such royalty fees for the same reason that competing MVPDs do — for access to private property to install and store equipment, and for space on the property in which to market their services to tenants. As such, revenue sharing arrangements represent legitimate business transactions between property owners and video services providers.

I hope this letter has helped to dispel some of the myths that are being promulgated by the MSOs. MDU owners more often than not are the victims of the efforts of the MSOs to retain their monopoly. To the extent that an MDU owner is able to secure a revenue sharing arrangement with a video services provider in exchange for providing access to his or her property, that arrangement normally reflects the actual value of the property right conferred and not some "kickback" designed to line the MDU owner's pockets.

Respectfully,

Henry Goldberg

Attachments

cc: William F. Caton
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Julius Genachowski
James Coltharp
Suzanne Toller
Anita Wallgren
Meredith Jones

TIME WARNER
Connect

January 23, 1997

Mr. Travis Mayfield
Vice President
Satellite Management Company
1010 East Chestnut Street
Santa Ana, CA 92701

Re: The RISK you are taking with your apartment complexes

Dear Mr. Mayfield:

It has come to my attention that you are seriously considering using a private cable company to provide cable service to your complexes. You have not responded to my phone calls so let me say this....Stop! **Please take the time to evaluate how much you have at RISK.** I know you are a very busy professional who doesn't want to waste time so I will be very direct.

There are many reasons why this company can not provide you with a reference list of apartment owners in the Time Warners Orange County service area. One of the reasons is most competitors and apartment owners know they will not be able to compete with the quantity and quality of Time Warner services.

Time Warner is very aggressive. Litigation is very expensive and full of surprises such as "Irrevocable License" or "Prescriptive Easement" to mention just a few. **Protracted litigation and interruption** of service are issues that are not easily remedied once the lines of service and communications are cut. We feel that it is in everyone's best interest to have at least one meeting to discuss all of the issues. We have never had the opportunity to meet and discuss the **financial rewards** of working with Time Warner. The Residential Shared Services sample proposal I sent you underscores our ability and resources to deliver the best solution for your apartments.

303 W. Palm Avenue • Orange, CA 92866 • 714-288-4270 • 714-538-4756 Fax

You may consider your decision to try to terminate our service as replacing one vendor with another. On the other hand we consider these actions to be those of a competitor for our customers. The significance of this difference of opinion is Time Warner will take every reasonable action to insure that our customers have an opportunity to enjoy our service...even if they have to move to get it

We will be in communication with your residents and prospective tenants trying to transfer their cable service. We will put you in the loop. We will also underscore the differences between our service and your cable service.

- Telecommuting residents would move just to have access to cable modems. Cable modems are up to 1,000 times faster than standard telephone lines.

- Do you know how many services you will be denying your residents ?

You are in the "loop" because you forced your residents to take your cable service. Being in the loop requires you to deal with service problems which will cost you time, money and tenants. You will loose tenants.

- It takes the revenue share from 200 to 400 cable customers to make up for the revenue lost from one rental unit.

- Is the Risk worth it?

I have enclosed a sample Residential Shared Services proposal and a copy of the Time Warner annual report.

I would greatly appreciate the opportunity to show you our regional communications center located at 303 West Palm Ave, in the City of Orange. Once you have seen the future of cable and telecommunications, you will know the best solution for your apartments is Residential Shared Services provided by Time Warner *Connect*.

Sincerely,

Nick Nicholson
Commercial Development Manager
Phone 714/289-6700

Proposal for

Residential Shared Services

(Eldridge Property)

Presented by

Time Warner *Connect*

January 24, 1997

Royalty Fee

The financial benefit to MDU Management for contracting with Time Warner *Connect* to offer this complete package of services does not stop with satisfied residents. Time Warner *Connect* will pay MDU Management each calendar quarter during the term of our agreement a royalty fee calculated as a percentage of gross revenue collected.

The amount of this royalty fee will be based on the success of the parties' efforts to sell the entertainment and communications products to your residents. As the royalty schedule below indicates, the greater the business relationship's success, the higher the royalty earned by MDU Management.

Product Penetration Targets	*Marketing Incentive Payments*
0 - 50%	5%
51% - 60%	6%
61% - 70%	7%
71% - 80%	8%
81% - 90%	9%
91% - 100%	10%
100+%	11%

Time Warner *Connect* will provide MDU Management with a statement of gross collected revenues detailing the sources of revenue. MDU Management will be allowed to review and audit Time Warner *Connect*'s records relating to each property's statement of gross collected revenues.